

used solely for competition and obtains prior written approval from the Administrator. A nonconforming engine imported pursuant to this paragraph may not be operated in the United States except for that operation incident and necessary for the competition purpose, unless subsequently brought into conformity with United States emission requirements in accordance with §§ 89.605-96, 89.609-96, or 89.611-96(c)(3).

(f) *Exclusions/exemptions based on date of original manufacture.* (1) Notwithstanding any other requirements of this subpart, the following nonroad engines are excluded, as determined by the engine's gross power output, from the requirements of the Act in accordance with section 213 of the Act and may be imported by any person:

(i) All nonroad engines greater than or equal to 37 kW but less than 75 kW originally manufactured prior to January 1, 1998.

(ii) All nonroad engines greater than or equal to 75 kW but less than 130 kW originally manufactured prior to January 1, 1997.

(iii) All nonroad engines greater than or equal to 130 kW but less than or equal to 560 kW originally manufactured prior to January 1, 1996.

(iv) All nonroad engines greater than 560 kW originally manufactured prior to January 1, 2000.

(2) Notwithstanding other requirements of this subpart, a nonroad engine not subject to an exclusion under § 89.611-96(f)(1) but greater than 20 original production (OP) years old is entitled to an exemption from the requirements of the Act, provided that it has not been modified in those 20 OP years and it is imported into the United States by an ICI. At the time of admission, the ICI must submit to the Administrator the written report required in § 89.604-96(a) (except for information required by § 89.604-96(a)(5)).

(g) An application for exemption and exclusion provided for in paragraphs (b), (c), and (e) of this section is to be mailed to: U.S. Environmental Protection Agency, Office of Mobile Sources, Manufacturers Operations Division (6405-J), 401 M Street, SW, Washington, DC 20460, Attention: Imports.

#### **§ 89.612-96 Prohibited acts; penalties.**

(a) The importation of a nonroad engine, including a nonroad engine incorporated into a nonroad vehicle or nonroad equipment, which is not covered by a certificate of conformity other than in accordance with this subpart and the entry regulations of the U.S. Customs Service is prohibited. Failure to comply with this section is a violation of section 213(d) and section 203 of the Act.

(b) Unless otherwise permitted by this subpart, during a period of conditional admission, the importer of a nonroad engine may not:

(1) Register, license, or operate the nonroad engine in the United States;

(2) Sell or offer the nonroad engine for sale;

(3) Store the nonroad engine on the premises of a dealer (unless approved by the Administrator), owner, or purchaser;

(4) Relinquish control of the nonroad engine to the owner or purchaser; or

(5) Cause a nonroad engine to be altered in any manner subsequent to modification and testing, if applicable, for which an application for final admission is based and submitted to the Administrator, unless approved in advance by the Administrator.

(c) A nonroad engine conditionally admitted pursuant to § 89.604-96 and not granted final admission within 120 days of such conditional admission, or within such additional time as the Administrator and the U.S. Customs Service may allow, is deemed to be unlawfully imported into the United States in violation of section 213(d) and section 203 of the Act, unless the nonroad engine has been delivered to the U.S. Customs Service for export or other disposition under applicable Customs laws and regulations. A nonroad engine not so delivered is subject to seizure by the U.S. Customs Service.

(d) An importer who violates section 213(d) and section 203 of the Act is subject to the provisions of section 209 of the Act and is also subject to a civil penalty under section 205 of the Act of not more than \$25,000 for each nonroad engine subject to the violation. In addition to the penalty provided in the Act, where applicable, a person or entity

who imports an engine under the exemption provisions of § 89.611-96(b) and, who fails to deliver the nonroad engine to the U.S. Customs Service is liable for liquidated damages in the amount of the bond required by applicable Customs laws and regulations.

(e)(1) An ICI whose nonroad engines imported under § 89.605-96 or § 89.609-96 fail to conform to federal emission requirements after modification and/or testing or who fails to comply with applicable provisions of this subpart, may, in addition to any other applicable sanctions and penalties, be subject to any, or all, of the following sanctions:

(i) The ICI's currently held certificates of conformity may be revoked or suspended;

(ii) The ICI may be deemed ineligible to apply for new certificates of conformity for up to three years; and

(iii) The ICI may be deemed ineligible to import nonroad engines under § 89.609-96 in the future and be placed on a list of ICIs ineligible to import nonroad engines under the provisions of § 89.609-96.

(2) Grounds for the actions described in paragraph (e)(1) of this section include, but are not limited to, the following:

(i) Action or inaction by the ICI or the laboratory performing the emission test on behalf of the ICI, which results in fraudulent, deceitful, or grossly inaccurate representation of any fact or condition which affects a nonroad engine's eligibility for admission to the United States under this subpart;

(ii) Failure of a significant number of imported nonroad engines to comply with federal emission requirements upon EPA inspection or retest; or

(iii) Failure by an ICI to comply with requirements of this subpart.

(3) The following procedures govern any decision to suspend, revoke, or refuse to issue certificates of conformity under this subpart:

(i) When grounds appear to exist for the actions described in paragraph (e)(1) of this section, the Administrator must notify the ICI in writing of any intended suspension or revocation of a certificate of conformity, proposed ineligibility to apply for new certificates of conformity, or intended suspension

of eligibility to conduct modification/testing under § 89.609-96, and the grounds for such action.

(ii) Except as provided by paragraph (e)(3)(iv), the ICI must take the following actions before the Administrator will consider withdrawing notice of intent to suspend or revoke the ICI's certificate of conformity or to deem the ICI ineligible to apply for new certification or to deem the ICI ineligible to perform modification/testing under § 89.609-96:

(A) Submit a written report to the Administrator which identifies the reason for the noncompliance of the nonroad engine, describes the proposed remedy, including a description of any proposed quality control and/or quality assurance measures to be taken by the ICI to prevent the future occurrence of the problem, and states the date on which the remedies are to be implemented or

(B) Demonstrate that the nonroad engine does in fact comply with applicable regulations in this chapter by retesting, if applicable, the nonroad engine in accordance with the applicable emission test specified in subpart E of this part.

(iii) An ICI may request, within 15 calendar days of the Administrator's notice of intent to suspend or revoke the ICI's certificate of conformity or to deem the ICI ineligible to apply for new certificates or to deem the ICI ineligible to perform modification/testing under § 89.609-96, that the Administrator grant such ICI a hearing:

(A) As to whether the tests, if applicable, have been properly conducted,

(B) As to any substantial factual issue raised by the Administrator's proposed action.

(iv) If, after the Administrator notifies an ICI of the intent to suspend or revoke the ICI's certificate of conformity or to deem the ICI ineligible to apply for new certificates or to deem the ICI ineligible to perform modification/testing under § 89.609-96 and prior to any final suspension or revocation, the ICI demonstrates to the Administrator's satisfaction that the decision to initiate suspension or revocation of the certificate of conformity or eligibility to perform modification/testing

under § 89.609–96 was based on erroneous information, the Administrator will withdraw the notice of intent.

(4) Hearings on suspensions and revocations of certificates of conformity or of eligibility to apply for new certificates or of eligibility to perform modification/testing under § 89.609–96 will be held in accordance with the following:

(i) The procedures prescribed by this section will apply whenever an ICI requests a hearing pursuant to paragraph (e)(3)(iii) of this section.

(ii) Hearings under paragraph (e)(3)(iii) will be held in accordance with the procedures outlined in § 86.614 of this chapter, where applicable, provided that where § 86.612 is referred to in § 86.614: § 86.612(a) is replaced by § 89.612–96(e)(2); and § 86.612(i) is replaced by § 89.612–96(e)(3)(iii).

(5) When a hearing is requested under this section and it clearly appears from the data or other information contained in the request for a hearing, or submitted at the hearing, that no genuine and substantial question of fact exists with respect to the issue of whether the ICI failed to comply with this subpart, the Administrator will enter an order denying the request for a hearing, or terminating the hearing, and suspending or revoking the certificate of conformity and/or deeming the ICI ineligible to apply for new certificates or to perform modification/testing under § 89.609–96.

(6) In lieu of requesting a hearing under paragraph (e)(3)(iii) of this section, an ICI may respond in writing to EPA's charges in the notice of intent to suspend or revoke. An ICI's written response must be received by EPA within 30 days of the date of EPA's notice of intent. No final decision to suspend or revoke will be made before that time.

#### **§ 89.613–96 Treatment of confidential information.**

The provisions for treatment of confidential information as described in § 89.7 apply.

### **Subpart H—Recall Regulations**

#### **§ 89.701 Applicability.**

The requirements of subpart H are applicable to all nonroad engines subject to the provisions of subpart A of part 89.

#### **§ 89.702 Definitions.**

The definitions in subpart A of this part apply to this subpart.

#### **§ 89.703 Applicability of part 85, subpart S.**

(a) Nonroad engines subject to provisions of subpart B of this part are subject to recall regulations specified in part 85, subpart S of this title, except for the items set forth in this section.

(b) Reference to section 214 of the Clean Air Act in § 85.1801 is replaced by reference to section 216 of the Clean Air Act.

(c) Reference to section 202 of the Act in § 85.1802(a) is replaced by reference to section 213 of the Act.

(d) Reference to “family particulate emission limits as defined in Part 86 promulgated under section 202 of the Act” in § 85.1803(a) and § 85.1805(a)(1) is replaced by reference to family emission limits as defined in part 89 promulgated under section 213 of the Act.

(e) Reference to “vehicles or engines” throughout the subpart is replaced by reference to “engines.”

### **Subpart I—Emission Defect Reporting Requirements**

#### **§ 89.801 Applicability.**

The requirements of subpart I are applicable to all nonroad engines subject to the provisions of subpart A of part 89. The requirement to report emission-related defects affecting a given class or category of engines remains applicable for five years from the end of the model year in which such engines were manufactured.

#### **§ 89.802 Definitions.**

The definitions in subpart A of this part apply to this subpart.